

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOZEF KOZIK, WALDEMAR JABLONSKI, MAREK MUZYKA, GREZGORZ SOCHON, SEBASTIAN KOPACZ, RAFAL PYCIOR, LESLAW MACIAG, ARTUR GARBACKI, PIOTR SZYSZKA, JOZEF KONEFAL, DARIUSZ PIATEK, RAFAL WIT and ION NANU on behalf of themselves and on behalf of all others similarly situated,

Docket No. 07 CV 4095
(FB) (SMG)

Plaintiffs,
-against-

REPLY TO CROSS-CLAIMS

WHitestone CONSTRUCTION CORP.,
WHitestone CONSTRUCTION SVC, 59TH STREET
REALTY, INC., ASTOR REALTY CORP., BEL-I
REALTY CORP., TINRON ENTERPRISES, INC.,
DURABUILD ENTERPRISES, INC., DURABUILD
CONTRACTING CORP., CITYWIDE
ENVIRONMENTAL SERVICES, LLC, TURNER
CONSTRUCTION COMPANY, TISHMAN
CONSTRUCTION CORPORATION,
TISHMAN CONSTRUCTION CORPORATION
OF NEW YORK, TISHMAN CONSTRUCTION
CORPORATION OF MANHATTAN, BOVIS LEND
LEASE, LMB, INC., VERIZON COMMUNICATIONS INC.,
BORIS GRZIC, CLAUDIA GRZIC, STEVEN GRZIC,
CHRISTINE GRZIC, VIRGINIA PAPA, DARIUSZ
KRUPA and JOZEF NOWAK

Defendants.

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Defendants, Whitestone Construction Corp., Whitestone Construction Svc., 59TH Street
Realty, Inc., Astor Realty Corp., Bel-I Realty Corp., Tinron Enterprises, Inc., Boris Grzic, Claudia
Grzic, Steven Grzic, Christine Grzic, Virginia Papa, Dariusz Krupa and Jozef Nowak (hereinafter
“Answering Defendants”), by their attorneys, Goetz Fitzpatrick, LLP, as and for their Reply to Cross-
Claims of defendant Turner Construction Company (“Turner”), state and allege as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Cross-Claims.
2. Deny the allegations in paragraph 2 of the Cross-Claims.
3. Deny the allegations in paragraph 3 of the Cross-Claims, except admit that defendants, Boris Grzic, Claudia Grzic, Steven Grzic and Christine Grzic, are officers and/or owners of defendant, Whitestone Construction Corp.
4. The Answering Defendants make no response to the allegations in paragraph 4 of the Cross-Claims as they are conclusions of law to which no response is required.

AS AND FOR A RESPONSE TO COUNT ONE OF THE CROSS-CLAIMS

5. In response to paragraph 5 of the Cross-Claims, the Answering Defendants repeat, reiterate and reallege each and every answer in paragraphs 1 through 4 of this Reply with the same force and effect as though fully set forth herein.
6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Cross-Claims as the allegations are vague and undefined except aver that Whitestone Construction Corp. entered into certain agreements with Turner to perform work on certain construction projects and Whitestone Construction Corp. has complied with all applicable labor law requirements, and respectfully begs leave upon the trial of this action to refer to the applicable agreements for all of the terms and conditions thereof.
7. Deny the allegations in paragraphs 7 and 8 of the Cross-Claims and aver that Whitestone Construction Corp. entered into certain agreements with Turner to perform work on certain construction projects and Whitestone Construction Corp. has complied with all applicable labor law requirements.

AS AND FOR A RESPONSE TO COUNT TWO OF THE CROSS-CLAIMS

8. In response to paragraph 9 of the Cross-Claims, the Answering Defendants repeat, reiterate and reallege each and every answer in paragraphs 1 through 7 of this Reply with the same force and effect as though fully set forth herein.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Cross-Claims as the allegations are vague and undefined except aver that Whitestone Construction Corp. entered into certain agreements with Turner to perform work on certain construction projects and has complied with all applicable labor law requirements, and respectfully begs leave upon the trial of this action to refer to the applicable agreements for all of the terms and conditions thereof.

10. Deny the allegations in paragraphs 11 and 12 of the Cross-Claims and aver that Whitestone Construction Corp. entered into certain agreements with Turner to perform work on certain construction projects and Whitestone Construction Corp. has complied with all applicable labor law requirements.

AS AND FOR A RESPONSE TO COUNT THREE OF THE CROSS-CLAIMS

11. In response to paragraph 13 of the Cross-Claims, the Answering Defendants repeat, reiterate and reallege each and every answer in paragraphs 1 through 10 of this Reply with the same force and effect as though fully set forth herein.

12. Deny the allegations in paragraph 14 of the Cross-Claims.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. The Cross-Claims fail to state a cause of action upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14. The Cross-Claims are barred because the Plaintiffs were paid all applicable prevailing wages, overtime wages and fringe benefits.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

15. The Plaintiffs were properly classified as laborers and paid the appropriate prevailing wage and benefits.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

16. A number of the projects the Plaintiffs worked on were not “public works projects” and, as such, are not subject to the prevailing wage laws.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

17. The Plaintiffs were paid in full for all of the work they performed as employees of Whitestone Construction Corp.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

18. Defendants 59th Street Realty, Inc., Astor Realty Corp., Bel-I Realty Corp. and Tinron Enterprises, Inc. are not construction companies, never employed any of the Plaintiffs and have no obligation to pay any monies to any of the Plaintiffs.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

19. Defendants, Virginia Papa, Dariusz Krupa and Jozef Nowak, are not officers or owners of defendant, Whitestone Construction Corporation. As such, there is no legal basis for naming them as defendants or for the Cross-Claims asserted against them by Turner.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

20. The Cross-Claims are barred because the Answering Defendants made payment of all sums which may have been due to the Plaintiffs, or any members of the alleged putative class, under any contract and under New York law and federal law, including the New York Labor Law and Fair Labor Standards Act.

WHEREFORE, the Answering Defendants demand judgment dismissing the Cross-Claims in their entirety, together with costs of this action and for such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 22, 2011

GOETZ FITZPATRICK LLP

By:



Neal M. Eiseman (NME-9183)

Timothy B. Cummiskey (TBC-0552)

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